

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

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EPA, REGION III, PHILA, PA

IN RE:

B&S Pike Associates, L.P.  
232-234 North 22<sup>nd</sup> Street  
Philadelphia, PA 19103,

DOCKET NO: CAA-3-2001-0003

Torypete Management Inc.  
1401 Arch Street  
Philadelphia, PA 19107,

Full Moon Construction Co., Inc.  
1118 Old Route 309  
Sellersville, PA 18960, and

Terra Environmental Contractors, Incorporated.  
1398 Wilmington Pike  
West Chester, PA 19382,

Respondents.

I hereby certify that the  
within is a true and correct copy  
of the original Consent Agreement  
filed in this matter.

  
Attorney for USEPA Region III

CONSENT AGREEMENT

I

Preliminary Statement

1. Pursuant to Sections 113(a)(3) and (d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7413(a) and (d), the Director of the Waste and Chemicals Management Division for the United States Environmental Protection Agency, Region III ("Complainant") initiated this administrative proceeding for the assessment of civil penalties against B&S Pike Associates, L.P. ("B&S"), Torypete Management Inc. ("Torypete"), Full Moon Construction Co., Inc. ("Full Moon") and Terra Environmental Contractors, Incorporated ("Terra") (collectively "Respondents"), by issuance of a Complaint and Notice of Opportunity for Hearing ("Complaint") filed on January 10, 2001. The Complaint, incorporated herein by reference, alleges that the United States Environmental Protection Agency ("EPA") has reason to believe that the Respondents violated Section 112 of the Act, 42 U.S.C. § 7412, and regulations promulgated thereunder at 40 C.F.R. Part 61, Subpart M, during an asbestos demolition project conducted at a facility located at 849-955 East Lancaster Avenue, East Caln Township, in Downingtown, Pennsylvania (hereinafter, "the Facility").

2. Respondents admit the jurisdictional allegations set forth in Section II, "Applicable Statutes and Regulations," of the Complaint.
3. Respondents neither admit nor deny the factual allegations contained in Section IV, "General Allegations," of the Complaint or in the "Findings of Fact" section of this Consent Agreement.
4. Respondents neither admit nor deny the legal conclusions contained in Section V, "Violations," of the Complaint and in the "Conclusions of Law" section of this Consent Agreement.
5. Respondents hereby expressly waive their right to a hearing on any issue of fact or law set forth herein.
6. Pursuant to Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), and the statutory factors set forth in Section 113(e) therein, EPA has determined that an appropriate civil penalty to settle the action is one hundred and thirty thousand dollars (\$130,000.00).
7. Respondents consent to the issuance of the attached Final Order, hereinafter recited, and consent to the payment of a civil penalty in the amount and in the manner set forth therein.
8. Each party to this action agrees to pay its own costs and attorney fees. Respondents agree that they will not seek costs and attorneys fees from the Complainant, the EPA or the federal government, and Complainant agrees that it will not seek costs and attorneys fees from the Respondents.
9. Complainant and the EPA reserve any rights and remedies available to them to enforce the provisions of this Consent Agreement, the Act and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following the entry of this Consent Agreement.
10. This Consent Agreement and the attached Final Order only resolve those civil claims which are alleged in the Complaint. Nothing herein shall be construed to limit the authority of the Complainant, or of EPA, to undertake action against any person, including the Respondents, in response to any condition which Complainant or EPA determine may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States' authority to pursue criminal sanctions.

II

Compliance Provisions

11. By their signatures to this Consent Agreement, Respondents certify that they have in place oversight policies and procedures to ensure that their employees, contractors and subcontractors comply with the requirements of 40 C.F.R. Part 61, Subpart M.
12. Respondents herein certify to Complainant and to EPA that, upon investigation, to the best of their knowledge and belief, they presently are in compliance with the provisions of the Act and regulations promulgated thereunder that are referenced in the Complaint.
13. This Consent Agreement shall apply to and be binding upon the Respondents, their officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.

III

Findings of Fact

14. EPA incorporates by reference all factual statements and allegations contained in Section IV, "General Allegations," of the Complaint.

IV

Conclusions of Law

15. EPA incorporates by reference all legal conclusions contained in Section V, "Violations," of the Complaint.
16. In view of the above incorporated Findings of Fact and Conclusions of Law, EPA herein concludes: a) that each of the Respondents has violated Section 112 of the Act, 42 U.S.C. § 7412, and regulations promulgated thereunder at 40 C.F.R. §§ 61.145(a), 61.145(b)(1) and (3), 61.145(c)(1), 61.145(c)(6)(i), 61.145(c)(10), 61.150(a)(1)(iii) and (iv), 61.150(a)(1)(iii) and (iv) and 61.150(b); and, b) that Respondents B&S and Torgypete additionally violated regulations promulgated thereunder at 40 C.F.R. §§ 61.145(c)(6)(ii), 61.145(c)(6)(i) and 61.145(c)(8). On that basis, Respondents are liable to the United States for a civil penalty pursuant to Sections 113(a)(3) and (d) of the Act, 42 U.S.C. §§ 7413(a)(3) and (d).

V

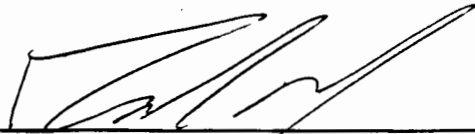
Full Settlement Recitation

17. In full settlement of this entire proceeding, including any and all charges and allegations set forth in the Complaint, and in consideration of each provision of this Consent Agreement and the attached Final Order, Respondents consent to the assessment and payment of a civil penalty in the amount of one hundred and thirty thousand dollars (\$130,000.00).
18. Respondents agree not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and Final Order.

The undersigned representative of B&S certifies that he is fully authorized to execute this Consent Agreement and to legally bind B&S to this Consent Agreement.

For B&S Pike Associates, L.P.:

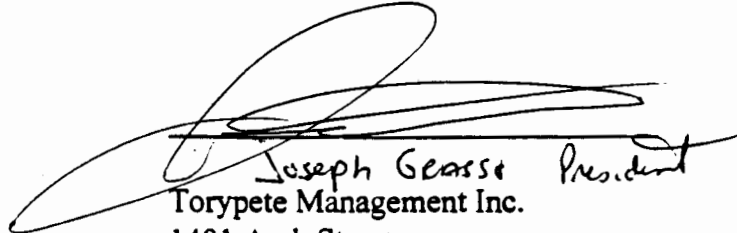
Feb 28, 2001  
Date

  
\_\_\_\_\_  
David Grasso, President  
B&S Pike Inc.  
(General Partner of B&S Pike Associates, L.P.)  
232 N. 22nd Street  
Philadelphia, PA 19103

The undersigned representative of Torypete certifies that he is fully authorized to execute this Consent Agreement and to legally bind Torypete to this Consent Agreement.

For Torypete Management Inc.:

Feb 28, 2001  
Date

  
Joseph Gersse President  
Torypete Management Inc.  
1401 Arch Street  
Philadelphia, Pennsylvania 19107

*Consent Agreement*

*Docket No. CAA-3-2001-0003*

The undersigned representative of Full Moon certifies that he is fully authorized to execute this Consent Agreement and to legally bind Full Moon to this Consent Agreement.

For Full Moon Construction Co., Inc.:

3-6-01

Date

Sal Lapio Pres.

Mr. Sal Lapio, President

Full Moon Construction Co., Inc.

1118 Old Route 309

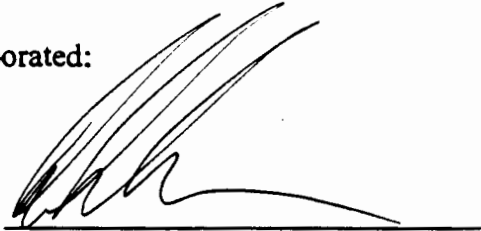
Sellersville, PA 18960

The undersigned representative of Terra certifies that he is fully authorized to execute this Consent Agreement and to legally bind Terra to this Consent Agreement.

For Terra Environmental Contractors, Incorporated:

2-26-2001

Date

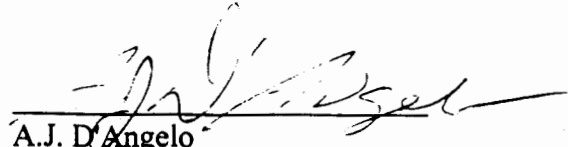
A handwritten signature in black ink, appearing to read 'C. Muhly', written over a horizontal line.

Mr. Conrad Muhly, President  
Terra Environmental Contractors, Incorporated  
1398 Wilmington Pike  
West Chester, PA 19382



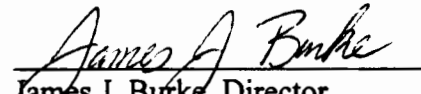
For Complainant:

2/28/2001  
Date

  
A.J. D'Angelo  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Accordingly, the Waste & Chemicals Management Division, United States Environmental Protection Agency, Region III, recommends that the Acting Regional Administrator, or his designee, issue the Final Order set forth below. The amount of the recommended civil penalty assessment is one hundred and thirty thousand dollars (\$130,000.00).

3/7/01  
Date

  
James J. Burke, Director  
Waste & Chemicals Management Division  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029